IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
FIRST APPEAL NO.702 OF 1986
WITH
CIVIL APPLICATION NO.5640 OF 1994
IN
FIRST APPEAL NO.702 OF 1986
AND
CROSS OBJECTION NO.27181 OF 1994

F.A.NO.702 OF 1986

The State of Maharashtra,)
(Through Special Land Acquisition)
Officer, Metro Centre No.1,)
Panvel, District - Raigad.).. Appellant

Vs.

1. Mahadeo Vishnu Puranik,)
since deceased by his heirs:-)

1A) Smt.Durgabai Mahadeo Puranik,)

1B) Shri Suryakant M.Puranik,)
both residing at Ravikant)
Banglow, Lokhandi Pada,)
Tal.Panvel, Dist. Raigad.)

2. The Maharashtra Executor and)
Trustee Company Ltd.,)
(Subsidiary of Bank of)
Maharashtra, Panch Pakhari)
Branch, Plot No.118,)
Bhoir Building,)
Near Aradhana Cinema,)
Thane (West) 400 602.).. Respondents.

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Shri K.K.Tated, AGP for the Appellant.

Shri S.P.Thorat for respondent Nos.1A, 1B and 2.

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C.A.NO.5640 OF 1994
IN
CROSS OBJECTION NO.27181 OF 1994
IN
F.A.NO.702 OF 1986

1. Mahadeo Vishnu Puranik,)
since deceased by his heirs:-)

1A) Smt.Durgabai Mahadeo Puranik,)
(deceased), through heirs and)
legal representatives :-)

1A-1)Smt.Uma Suryakant Puranik,)
aged 53, r/at Ambika Arcade,)
1st Floor, Block No.103,)
Lokhandipada, Panvel,)
Dist. Raigad.)

1A-2)Miss Bhavana Suryakant Puranik,)
aged 26, r/at as above.)

1A-3) Sau.Avani Dhananjay Gadre,)
aged 30 years, r/at Pal,)
Deulwada, Dist. Raigad.)

1B) Shri Suryakant M.Puranik,)
deceased through heirs and)
legal representatives :-)

1B-1)Smt.Uma Suryakant Puranik,)
aged 53, r/at Ambika Arcade,)
1st floor, Block No.103,)
Lokhandipada, Panvel,)
Dist. Raigad.)

1B-2)Miss Bhavana Suryakant Puranik,)
aged 26, r/at as above.)

1C-3) Sau.Avani Dhananjay Gadre,)
aged 30 years, r/at Pal,)
Deulwada, Dist. Raigad.).. Petitioners.
(Org.Respondents
No.1-A & 1-B/
Claimants.)

Vs.

1. The State of Maharashtra,)
The Special Land Acquisition)
Officer, Metro Centre No.1,)
Panvel, District - Raigad.)

2. The Maharashtra Executor and)
Trustee Company Ltd.,)
(Subsidiary of Bank of)
Maharashtra, Panch Pakhari)
Branch, Plot No.118,)
Bhoir Building,)
Near Aradhana Cinema,)
Thane (West) 400 602.).. Respondents.

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Shri S.P.Thorat for the Petitioners.

Shri K.K.Tated, AGP for the respondents.
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CROSS OBJECTION NO.27181 OF 1994
IN
FIRST APPEAL NO.702 OF 1986

The State of Maharashtra,)
Through Special Land Acquisition)
Officer, Metro Centre No.1,)
Panvel, District - Raigad.).. Appellant
(Org.Opponent)

Vs.

1. Mahadeo Vishnu Puranik,)
since deceased by his heirs:-)

1A) Smt.Durgabai Mahadeo Puranik,)

1B) Shri Suryakant M.Puranik,)
both residing at Ravikant)
Banglow, Lokhandi Pada,)
Tal.Panvel, Dist. Raigad.)

2. The Maharashtra Executor and)
Trustee Company Ltd.,)
(A Subsidiary of Bank of)

Maharashtra), having its)
registered office at)
Lokmangal 1501, Shivaji Nagar,)
Pune and Branch Office at)
Gokhale Road, Thane.).. Respondents
(Org.Claimants.)

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Shri K.K.Tated, AGP for the Appellant.

Shri S.P.Thorat for respondent Nos.1A, 1B and 2.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29TH SEPTEMBER, 2005.

ORAL JUDGMENT: (PER V.M.KANADE, J)

1. The Appellant-State is challenging the judgment and award passed by the Civil Judge, Senior Division, Alibag, in Land Acquisition Reference No.36 of 1984 whereby he had enhanced the compensation awarded by the Special Land Acquisition Officer to Rs.15/- per square meter.

FACTS:-

2. Brief facts which are relevant for deciding the First Appeal and the Cross Objection are as under:-

3. The notification under Section 4 of the Land Acquisition Act, 1894, hereinafter called as "the said Act", was passed on 3rd February, 1970. The award was passed on 30th March, 1984, the possession of the land was, however, taken on 19th June, 1973. The Land Acquisition Officer awarded the compensation at the rate of Rs.4/-, Rs.6/- and Rs.6.50ps. per square meter. The application for reference under Section 18 of the said Act was filed by the claimant within a period of limitation and the additional amount at the rate of Rs.15/- p.s.m. was claimed along with the other benefits for which the claimant was entitled if the amount was enhanced.

4. The Land Reference Court, after taking into consideration the evidence which was led by the wife of the claimant and the Architect Shri Vaidya, who was examined as an expert, came to the conclusion that the land in question had non-agricultural potentiality and therefore, there was every possibility of development potentiality. Apart from this fact, another relevant factor which was considered by the Reference Court was that Panvel-Vavanje road and Bombay Poona road pass through the acquired lands. Similarly, the Reference Court observed that the Survey No.75 which was

touching the Bombay Poona road and near Panvel-Vavanje road was just 400 meters away from the Bombay Pune Highway. The Reference Court has also relied on the judgment of the Bombay High Court in First Appeal No.1006 of 1977 and 660 of 1977 and after taking into consideration all these factors came to the conclusion that the claimant was entitled to get compensation at the rate of Rs.15/- p.s.m.

5. Shri Tated, the learned AGP appearing on behalf of the State submitted that the Reference Court however had not taken into consideration the fact that though the land, apart from being in the vicinity of the Bombay Pune Highway, had developed potentiality he did not consider the deductions which would have to be made for the purpose of development of the land. He has invited our attention to the evidence of Durgabai, who is the wife of the claimant, and also the evidence of Shri Vaidya, who had prepared the valuation report and was examined as an expert. He submitted that it is a settled position in law that even if the Court comes to a conclusion that the land had development its potentiality, yet certain factors are required to be considered and certain deductions also were necessary. In support of the said submission, he relied upon the recent judgment of the Supreme Court

in the case of **Viluben Jhalejar Contractor (Dead) by LRs. v. State of Gujarat,** reported in (2005) 4 SCC 789.

6. Learned counsel appearing on behalf of the claimant vehemently opposed the submission made by learned counsel appearing on behalf of the Government. He submitted that the Reference Court had considered the evidence of the wife of the claimant and the expert valuer, who had been examined by the claimant, and had given cogent reasons for accepting the evidence which was given by these two witnesses. He submitted that the Reference Court also had taken into consideration the other relevant factors such as the proximity of the land to the national highway and other two major roads as also the fact that the adjoining land has been developed by the time that the notification under Section 4 of the said Act has been issued. He submitted that even if the positive and negative factors which are stated in the judgment on which reliance is placed by learned counsel appearing on behalf of the respondent is taken into consideration, even then the Reference Court had taken these factors into consideration and thereafter had arrived at the figure of Rs.15/- p.s.m. as the market rate. He submitted that therefore though the

deductions had not been made after arriving at a higher rate, yet the figure which was finally arrived at itself denoted the market value after taking into consideration the said factors and deductions for the purpose of development of the land. He submitted that therefore the compensation which was granted by the Reference Court was liable to be enhanced. He submitted that the delay caused in filing the cross objections may be condoned.

FINDINGS AND CONCLUSION:

7. With the assistance of the learned AGP appearing on behalf of the State, we have perused the judgment and award passed by the Reference Court and also the evidence led by the wife of the claimant and the Valuer Shri Vaidya. The expert valuer has given sufficient evidence to indicate the potential value of the land. The Valuer Shri Vaidya has given the distance and the proximity of the land to the Bombay Pune Highway and has further observed that the Bombay Pune Road and Panvel- Vavanje road pass through the acquired land, as a result of which the value of the acquired land was enhanced. He also considered the other factors which enhanced the potentiality of the land and has also considered the sale deed and the

sale instances in respect of the other survey numbers in the adjoining area where these lands were sold at the rate of Rs.13/- p.s.m. in April, 1964. Shri Vaidya therefore has taken into consideration the sale instances which were proximate in point of time and has accordingly given the evidence in respect of these lands from the point of view of the proximity of time and distance from the acquired land. Apart from this evidence, the claimant has also brought on record the certified copy of the judgment of this Court in respect of the lands in Survey Nos.93, 109, 106/2 and 104 in First Appeal Nos.1006 of 1977 and 660 of 1977 which were acquired for the same purpose but was situated at the western side of the land which was acquired. Considering this evidence on record and the valuation report which was filed by the valuer Shri Vaidya, which is exhibited at Exhibit-21, we have no hesitation in coming to the conclusion that the Land Reference Court has correctly assessed the market rate as Rs.15/- per square meter.

8. However, the Reference Court nowhere has taken into consideration the deductions which have been made in respect of the development charges even if it is held that the land has development potentiality. In our view, the ratio of the judgment in the case of

Viluben Jhalejar Contractor's case (supra) is squarely applicable to the facts of the present case. The Supreme Court has laid down the guidelines in respect of various factors which were taken into consideration while arriving at the market value of the land and one of the relevant factors is the development charges which is to be deducted while arriving at the correct market value of the land. The submission of learned counsel appearing on behalf of the Government will have to be accepted and 30% amount has to be deducted towards development charges.

9. In the result, the First Appeal is partly allowed. The compensation which is arrived at by the Reference Court is accordingly reduced by 30 per cent and after the said deductions are made, the statutory benefits to which the claimant is entitled shall be calculated and the decree to stand modified accordingly. The First Appeal is allowed in the above terms.

10. In so far as the Civil Application No.5640 of 1994 for condonation of delay in filing the cross objections is concerned, the same has been filed by the claimant after a period of six years. It is stated in the application that due to old age, the

claimant could not file cross objections in time. In our view, therefore, as sufficient cause for condonation of delay in filing the cross objections has been shown, the delay in filing the cross objections is condoned.

11. The civil application is accordingly disposed of. In so far as the Cross Objections are concerned, the submissions made by learned counsel appearing on behalf of the claimants are considered and for the reasons stated hereinabove, the Cross Objections are dismissed. The excess amount which is withdrawn by the claimant shall be refunded within a period of 12 weeks and interest at the rate of 6% per annum thereon.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)